

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BILLY ALLEN,

No. C 09-0897 WHA (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

ROBERT AYERS, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at San Quentin State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee. The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. *See* 28 U.S.C. 2241(d) (venue proper in both district of conviction and district of confinement).

STATEMENT

In 1991 a Stanislaus County jury convicted petitioner of first-degree murder. He was sentenced to twenty-seven year to life in prison. He alleges that he has exhausted these parole claims by way of state habeas petitions.

DISCUSSION

A. STANDARD OF REVIEW

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in

violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. "[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real possibility of constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). "Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

B. LEGAL CLAIMS

The petition is directed to a denial of parole at petitioner's initial parole hearing on August 22, 2007. At that point he had served sixteen years of his twenty-seven years to life sentence.

As grounds for federal habeas relief, petitioner asserts that (1) the Board violated his state and federal due process rights because it did not apply the correct criteria under California law and because there was not "some evidence" that he would be a present danger to society if released; (2) the Board's decision not to hold another hearing for four years violated his due process rights; and (3) the superior court did not provide a meaningful review of his claims.

Issue three does not state a claim for habeas relief, because "federal habeas relief is not available to redress alleged procedural errors in state post-conviction proceedings." *Ortiz v. Stewart*, 149 F.3d 923, 939 (9th Cir.1998); *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989) ("a petition alleging errors in the state post-conviction review process is not addressable through habeas corpus proceedings"); *see also Montgomery v. Meloy*, 90 F.3d 1200, 1206 (7th Cir. 1996) ("errors in state collateral review cannot form the basis for federal habeas corpus relief"). It will be dismissed. In addition, petitioner's state law claims, including his claim that

1 the Board violated his state due process rights, cannot be considered here. *See Estelle v.*
2 *McGuire*, 502 U.S. 62, 67-68 (1991) (federal habeas unavailable for violations of state law or
3 for alleged error in the interpretation or application of state law). They will be dismissed. His
4 other claims are sufficient to require a response. *See McQuillion v. Duncan*, 306 F.3d 895, 904
5 (9th Cir. 2002) (due process requires that at least “some evidence” support parole denial).

6 CONCLUSION

7 1. Petitioner’s third claim and his state law claims are **DISMISSED**.

8 2. The clerk shall mail a copy of this order and the petition with all attachments to the
9 respondent and the respondent's attorney, the Attorney General of the State of California. The
10 clerk shall also serve a copy of this order on the petitioner.

11 2. Respondent shall file with the court and serve on petitioner, within sixty days of the
12 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
13 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
14 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
15 trial record that have been transcribed previously and that are relevant to a determination of the
16 issues presented by the petition.

17 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
18 court and serving it on respondent within thirty days of his receipt of the answer.

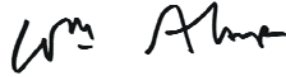
19 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
20 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
21 motion, petitioner shall file with the court and serve on respondent an opposition or statement of
22 non-opposition within thirty days of receipt of the motion, and respondent shall file with the
23 court and serve on petitioner a reply within 15 days of receipt of any opposition.

24 4. Petitioner is reminded that all communications with the court must be served on
25 respondent by mailing a copy of the document to respondent’s counsel. Papers intended to be
26 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also
27 must keep the court informed of any change of address by filing a separate paper with the clerk
28 headed “Notice of Change of Address,” and comply with any orders of the court within the time

1 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this
2 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*
3 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

4 **IT IS SO ORDERED.**

5 Dated: March 17, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE